



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 19, 2003

Mr. Marc J. Schnall
Soules & Wallace
100 West Houston Street, Suite 1500
San Antonio, Texas 78205-1433

OR2003-9235

Dear Mr. Schnall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 193118.

The City of Dilley (the "city"), which you represent, received a request for records relating to city telephone, cell phone, and internet service. You claim that some of the requested information is excepted from disclosure under sections 552.117 and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

You note that the cell phone bills record calls made to the home phone numbers of police officers and claim that this information, in addition to the city called, is excepted from disclosure under section 552.117 of the Government Code. *See Gov't Code* § 552.117(a)(2).² Section 552.117(a)(2) of the Government Code makes confidential all

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See Open Records Decision* Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

² In Senate Bill 1388, which became effective on June 20, 2003, the Seventy-eighth Legislature amended section 552.117 of the Government Code by adding "(a)" to the relevant language of this provision. *See Act of May 30, 2003, 78th Leg., R.S., ch. 947, 2003 Tex. Sess. Law Serv. 2822 (Vernon)* (to be codified as an amendment to Gov't Code sec. 552.117).

information that relates to the home address and home telephone number of a "peace officer."³ Whether a particular item of information is protected under this section must be determined at the time that the request for the information is received by the governmental body. *See* Open Records Decision No. 530 at 5 (1989). We presume that the numbers you have marked are in fact the home telephone numbers of "peace officers" as defined by article 2.12 of the Code of Criminal Procedure. If the officer was employed by the city at the time of the request, or if the officer was no longer employed by the city at the time of the request and still a licensed peace officer, the home telephone number and city called must be withheld pursuant to section 552.117(a)(2). If the officer was no longer employed by the city at the time of the request and was no longer a licensed peace officer, and the former officer made an election to keep this information confidential in accordance with section 552.024 prior to the city's receipt of the current records request, the information must be withheld under section 552.117(a)(1). *See* Gov't Code § 552.117(a)(1). If the officer has never been employed by the city but has elected under section 552.1175(b) to restrict access to his or her home telephone and address in city records, then the city must withhold the information under section 552.1175. If none of these scenarios applies, the information at issue must be released.

You also note that the bills for city telephone, cell phone, and internet service include account or customer numbers and claim that this information is excepted from disclosure under section 552.136 of the Government Code. Section 552.136 makes confidential access devices that are collected or maintained by or for a governmental body. Section 552.136(a) defines "access device" as a

. . . card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

You have marked account numbers and customer numbers that appear in the sample documents submitted. Some providers have used the term "customer number" as an identifier that is the functional equivalent to an account number and therefore excepted from disclosure under section 552.136; however, we note that one of the bills, which we have flagged, contains both an account number and a customer number. In this case, the customer

³Unlike other public employees, a peace officer need not affirmatively claim confidentiality for this information. Open Records Decision No. 488 (1988); *see also* Open Records Decision No. 506 (1988).

number is a telephone number for the account. Although section 552.136 makes confidential the account numbers on these invoices, you have not explained how the same exception applies to this type of customer number. Pursuant to section 552.136, the city must therefore withhold only the types of account numbers corresponding to those marked on the submitted sample documents.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

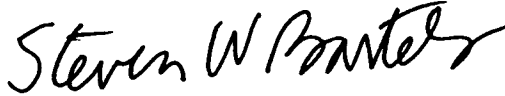
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Steven W. Bartels". The signature is written in a cursive, flowing style.

Steven W. Bartels
Assistant Attorney General
Open Records Division

SWB/seg

Ref: ID# 193118

Enc. Submitted documents

c: Ms. Patricia Garcia
P.O. Box 2173
Dilley, Texas 78017
(w/o enclosures)